Court No.3

Criminal Revision No. 698/2001
(Old No. 905/1985)
Sadhu Singh and two others ……Revisionist.

Versus

State …….Respondent.

Hon'ble Irshad Hussain, J.

Hear Sri J.S.Virk learned counsel for the revisionists and Sri R.S.Sambhal A.G.C. and brief holder Vanita Verma for respondent.

This criminal revision is directed against the judgment and order dated 24.5.84 passed by Special Judge, Nainital dismissing the criminal appeal against the judgment dated 16-2-1984 passed by Judicial Magistrate, Kashipur in criminal case No.743/1983 State versus Sadhu Singh and others. These revisionists were convicted and sentenced to undergo simple imprisonment for a period of 6 months and to pay a fine of Rs. 500/- each U/S 26 of the Forest Act.

The lower Court record had been weeded out and considering that the trial was hled before the Magistrate in the year 1983 it will be difficult to re-construct the record of the lower court for being perused by this Court in connection with the disposal of this revision. However with a view to find out whether the learned trial Magistrate and the appellate Court have properly appraised and considered the evidence of the prosecution, the judgment under consideration has been perused thoroughly with the help of the learned counsel for the revisionists as well as learned A.G.C. The most glaring aspect of the case is that although 4 forest officials are said to have detected the miscreants in the intervening night of 26/27-10-1982 illegally cutting Khair wood and loading the same in a truck in the reserve forest, none of the miscreant could be apprehended at the spot despite these being challenged by them at that time. if the miscreants were seen cutting the trees and loading the timber in the truck it would not have been possible for them to flew from there and after loading the cut wood in the truck soon after they were challenged by these forests officials namely Khushal Singh Forest Guard, Anand Singh Rawat, Narayan Singh and Khushal Singh Forest Watcher who were then on petrol duty in Aampani beat of the reserve forest. The fact that neither a single piece of timber or a billet could be seized from the scene of the occurrence, belie the claim made by the two witnesses Khushal Singh (P.W.1) and Anand Singh (P.W.2) that the miscreants have cut Khair wood in the reserve forest. Loading of the billets or

cut wood in the truck or in the vehicle require sufficient time and it could not safely be believed that thse miscreants were able to do the job in such a haste to make their escape possible from there in the face of the challenge given by the 4 forest officials. Considering this peculiar aspect of the case it could safely be accepted that the court below did not consider important fact of the matter in the proper perspective and wrongly placed implicit reliance on the evidence of both these forest officials to hold the appellants guilty of the offence for which they were prosecuted.

From the above it is evident that the evidence in the case was not appraised in proper legal prerspective and the evidence was wrongly relied upon in convicting the appellants. The revision has thus force and is to be allowed accordingly.

The revision is allowed and the judgment and order dated 24-5-1985 is set aside and the appellants –accused are acquitted of the charge U/s 26 of the Forest Act. Find if deposited shall be refunded to the appellants.

(Irshad Hussain, J.)

Dated:21.8.2003

ISB